

REMARKS/ARGUMENTS

Applicant acknowledges receipt of the Office Action dated June 30, 2003. Claims 1-7, 9-49, 54-60, 62-102, and 107-115 have been cancelled in response to this action. New claims 116-143 are presented herein. All new claims are supported in the specification as originally filed; no new matter has been incorporated. Claims 116-143 remain in the case. Reconsideration and further examination of the application is respectfully requested.

The examiner has rejected Claims 1-6, 54-59, 103-106, and 113-115 under 35 USC 103(a) as unpatentable over Wiersma, Hamel, Ayer, and Weinstein, combined with Armstrong. Wiersma, Hamel, Ayer and Weinstein are described by the examiner as “essentially duplicative” references which teach anti-histamines, alone or in combination with a decongestant, for treatment of allergies. Armstrong shows stinging nettle in a composition intended for treatment of allergies. The examiner asserts that it would have been obvious to one of ordinary skill in the art to combine stinging nettle with other allergy-treating drugs.

Similarly, the examiner has rejected Claims 107-109 under 35 USC 103(a) as unpatentable over Wiersma, Hamel, Ayer, and Weinstein combined with Armstrong, and further in view of Thomas, on the grounds that Thomas provides motivation to add milk thistle to the claimed composition.

Also, the examiner has rejected Claims 1107-109 under 35 USC 103(a) as unpatentable over Wiersma, Hamel, Ayer, and Weinstein combined with Armstrong, and further in view of Bryce-Smith, on the grounds that Bryce-Smith teaches that zinc is an effective immune booster, and that it would have been obvious to one of ordinary skill in the art to combine zinc with other allergy treating agents.

However, a review of Armstrong, a key reference used in each of the above rejections, shows that the primary active ingredient in the treatment regimen described is cyanocobalamin (Vitamin B12), a biochemical that contains a tetrapyrrole ring system that is chemically very similar to the porphyrin ring system of the heme compounds. This vitamin is not available from plant sources. Armstrong further says that stinging nettle may be administered along with cyanocobalamin.

However, Armstrong fails to provide any teaching that would lead one of ordinary skill in the art to substitute the combination of stinging nettle and an anti-histamine for a cyanocobalamin/stinging nettle regimen for treatment of allergies. Similarly, Wiersma, Hamel, Ayer and Weinstein fail to provide a teaching that would lead one of ordinary skill in the art to compound the disclosed antihistamines with stinging nettle.

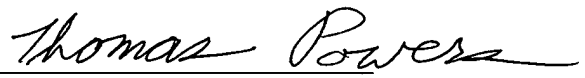
Thus, newly presented independent claims 116 and 126-129 have been drafted so as to restrict the neutraceutical component of the claimed composition to be stinging nettle or an extract thereof; and optionally, a second neutraceutical, where the second neutraceutical may be a herb or herb extract, zinc or a compound thereof, and/or ascorbic acid or a salt or a derivative thereof. Cyanocobalamin, the essential component in the treatment regimen of Armstrong, is explicitly excluded from these claims, since cyanocobalamin is exclusively derived from animal sources.

While we believe that the instant amendment places the application in condition for allowance, should the Examiner have any further comments or suggestions, it is respectfully requested that the Examiner telephone the undersigned attorney in order to expeditiously resolve any outstanding issues.

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Attorney Docket No.: XMP 2037

In the event that the fees submitted prove to be insufficient in connection with the filing of this paper, please charge our Deposit Account Number 50-0578 and please credit any excess fees to such Deposit Account.

Respectfully submitted,
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